That leaves him with the loss of earnings which he had pleaded but limited to 17 months. At the time of the accident on July 30, 1977, the plaintiff was an Administrative Officer with Keang Nam Enterprise Limited. He was paid a salary of $400/- per month with the promise of further adjustments based on performance. The full terms of his employment appear at page 1 of AB-1. From the evidence it is clear that after the accident, he did not continue working for Keang Nam Enterprise Limited and no reason was given why he had left them. However, what is undisputed is that up to the time of trial, he was never employed anywhere else. In Court, he described himself as being a student. Counsel for the defendant concedes that a 6-month disability period would be fair and reasonable under the circumstances and to this, I am in complete agreement. To begin with, he was hospitalised for just over 3 months and giving him another 3 months to recuperate, he would, after the period of 6 months, be in a position to continue working where he was before the accident or seek gainful employment elsewhere for after all, he should do everything in his power to mitigate his own losses.

There is evidence that during the 3-month probationary period as an Administrative Officer, the plaintiff was entitled to $400/- per month and it was only after working for another 3 months after confirmation that he could have hoped to get a salary increase based on performance.

His letter of appointment is dated June 8, 1977 and assuming that he started working on July 1, 1977 he would have completed one month at the time of the accident and he would naturally have been paid for that one month. It is only from August 1, 1977 that his period of incapacity starts to run. If not for the accident he would have been confirmed by end of September 1977 and according to his testimony, from October until December 1977, depending on his performance, his salary would be increased to $450/-. The next increase of either $50/- or $100/- would take place in January 1978. Six months from August 1 1977 would stretch to February 1978 and for this period, I calculate plaintiff's earning losses assuming that he gave his best performance as follows

From August 1, 1977 to September 31, 1977 his loss would be at $400/- per month i.e. 2 x $400/- = $800/-.
From October 1, 1977 to December 31, 1977 his loss would be at $450/- per month i.e. 3 x $450/- = $1,350/-.
For February 1978 his loss would be at $550/-. Thus the total amount that the plaintiff is entitled to for loss of earnings during the 6-month incapacity period is $2,700/-.

On the whole then, there will be judgment to the plaintiff for the sum of $81,500/- general damages, interest at the rate of 6% per annum, from the date of service of writ to judgment, $5,810/- special damages ($2,700 + agreed $3,110/-) interest at 3% per annum, from date of accident to judgment and costs.

Order accordingly.

Solicitors: *Ranjit, Thomas & Kula; Syarikat Richard Ho.*

PUBLIC PROSECUTOR v. SERIDARAN

[A.Cr.J. (Peh Swee Chin J.) November 3, 1983]
[Seremban – Criminal Appeal No. 48 of 1982]

Criminal Law & Procedure – Non-seizable case – Prosecution need not produce "order to police to investigate issued by Public Prosecutor" at trial – Criminal Procedure Code, ss. 108(ii) & 129(1).

The issue before the present Court was, "in a prosecution of a non-seizable case conducted by the police before a court, where such non-seizable case has earlier been investigated by the police, is it incumbent on the prosecution to produce the order to the police to investigate issued by the Public Prosecutor?"

The learned Magistrate applied his mind solely to the failure to produce the said order, and upon such failure, he had relied for holding the trial before him to be a nullity and ordered an acquittal.

Held: (1) irrespective of whether such an order to investigate has in fact been obtained or not by the police under section 108(ii) of the Criminal Procedure Code, it is not incumbent for the prosecution to produce such an order at the trial, for failure to produce it in no way affects the jurisdiction of the court to hear the case unlike section 129(1) of the Criminal Procedure Code, eg. where it is expressly provided that the court shall not take cognisance of certain specified offences except with the previous sanction of the Public Prosecutor;

(2) even assuming the trial to be a nullity, the learned magistrate should have discharged the defendant, with such discharge not amounting to an acquittal. The order of acquittal would therefore be set aside and a re-trial be ordered.

Cases referred to:
(1) *Kuruma* v. *The Queen* [1955] 1 All E.R. 236.

(2) *Cheng Swee Tiang* v. *Public Prosecutor* [1964] M.L.J. 291.

CRIMINAL APPEAL.

Balia Yusof bin Wahi for the appellant.

Seeralan @ Mahadevi Ganeshmurugan for the respondent.

Cur. Adv. Vult.

Peh Swee Chin J.: The short but novel point raised in this appeal is this. In a prosecution of a non-seizable case conducted by the police before a court, where such non-seizable case has earlier been investigated by the police, is it incumbent on the prosecution to produce the order to the police to investigate issued by the Public Prosecutor?

Section 108(ii) of the Criminal Procedure Code provides:—

"(ii) No police officer shall in a non-seizable case exercise any of the special powers in relation to police investigations given by this Chapter without the order of the Public Prosecutor."

Clearly this sub-section makes it mandatory for the police to have, in hand, an order to investigate from the Public Prosecutor before proceeding to do so. The failure to do so would render the evidence obtained by the police in such investigation, illegal. In my judgment, however, irrespective of whether such an order to investigate has in fact been obtained or not by the police under section 108(ii) of the Criminal Procedure Code, it is not incumbent for the prosecution to produce such an order at the trial, for failure to produce it in no way affects the jurisdiction of the court to hear the case, unlike section 129(1) of the Criminal Procedure Code, e.g. where it is expressly provided that the court shall not take cognisance of certain specified offences except with the previous sanction of the Public Prosecutor.

Another reason for my view is that, on the footing, that such evidence is illegally obtained, I am bound by, and I do certainly subscribe to the view that if such illegally obtained evidence is relevant to the matters in issue it is admissible in evidence on the authority of the judgment of the Privy Council in *Kuruma* v. *The Queen*[1].

I am unable to accede to counsel's argument that it would cause a miscarriage of justice, not only because the decision of *Kuruma (supra)* is against it but also that the court would have to consider the broader interest of the public to prevent such evidence on crimes or for doing justice, from being withheld. Please see also the case of *Cheng Swee Tiang* v. *Public Prosecutor*[2].

From his grounds of decision, there can be no doubt that the learned magistrate applied his mind solely to the failure to produce the said order, and upon such failure, he had relied for holding the trial before him to be a nullity and ordering an acquittal, without a moment's glance at the evidence. At this juncture, I must also express my complete agreement with the learned Deputy's submission that even assuming the trial to be a nullity, the order of acquittal was wrong; and that, instead the learned magistrate should have discharged the defendant, with such discharge not amounting to an acquittal for if a trial is a nullity it is as good as not having taken place.

In view of my earlier conclusion on the inconsequence of the failure to produce the order in question, and taking account of the fact that the learned magistrate in question has since resigned to go into private practice, I allow the appeal, setting aside the order of acquittal, and ordering a retrial of the defendant at the Kuala Pilah magistrate's court, with a direction that the priority of an early trial be given as I have been given to understand from the Bar that the defendant a government servant, has been interdicted from service pending the ultimate outcome of this case.

Order for acquittal set aside;
Re-trial Ordered.

Solicitors: *Mahadevi Ganeshmurugan & Co.*